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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12
13

14 **EMMA C., et al.,**

15 Plaintiffs,

16 **v.**

17 **THURMOND, et al.,**

18 Defendants.
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Case No. 3:96-cv-04179-VC

**STATE DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
TERMINATE THE CONSENT DECREE
AND FOR DISMISSAL OF THE ACTION
WITH PREJUDICE; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

**[FIRST AMENDED CONSENT DECREE,
SECTION 13.0 AND 18.10; AND FRCP
60(B)(5),(6)]**

Date: December 12, 2024
Time: 2:00 p.m. (videoconference)
Courtroom: 4
Judge: The Honorable Vince Chhabria

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on December 12, 2024, at 2:00 p.m., or as soon thereafter that may be heard before the Honorable Judge Vincent Chhabria, in the United States District Court for the Northern District of California, located in Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendants California Department of Education (CDE), Tony Thurmond, in his official capacity as the State Superintendent of Public Instruction, and State Board of Education (SBE) (collectively, State Defendants or the State) will hereby move, pursuant to Section 13.0 and 18.10 of the First Amended Consent Decree, and pursuant to Federal Rules of Civil Procedure, Rules 60(b)(5) and 60(b)(6), for an order terminating the First Amended Consent Decree (Dkt. 832; *see also* Decl. Leask, Exh. 1) (hereinafter, Consent Decree), thereby lifting the District Court's oversight and monitoring of State Defendants under the Consent Decree, and dismissing the action, with prejudice.

This motion is made in response to the Court's Order on October 25, 2024 (Dkt 2861) and Minute Order (Dkt. 2859) following completion of the four-phase evidentiary hearing process established by the Court to evaluate compliance of the State with respect to the obligations under the Individuals with Disabilities Education Act (IDEA) and the Consent Decree. This motion is based on this Notice of Motion and Motion, the accompanying Points and Authorities in Support of the Motion, the pleadings, papers and evidence on file herein and in the Court's docket for the Action, and such other and further arguments as the Court may allow at the time of the hearing on this motion.

Dated: November 7, 2024

Respectfully submitted,

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DARRELL W. SPENCE
Supervising Deputy Attorney General

/s/ Stacey L. Leask
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants California Department of Education (CDE), Tony Thurmond, in his official capacity as the State Superintendent of Public Instruction, and State Board of Education (SBE) (collectively, State Defendants or the State) hereby move to have the First Amended Consent Decree (Dkt. 832; *see also* Decl. Leask, Exh. 1) lifted and for dismissal of the action, with prejudice, pursuant to Section 13.0 and 18.10 of the First Amended Consent Decree as well as Federal Rules of Civil Procedure 60(b)(5) and 60(b)(6).¹

The Court has found the State in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq. (IDEA) and the Consent Decree following the evidentiary hearing process set by the Court. Thus, under the express terms of the Consent Decree there exists a rebuttable presumption that the State has a system capable to adequately monitor, supervise, and ensure a free appropriate public education (FAPE) to Class Members in the least restrictive environment. *Id.*; Dkt. 2428, 2598, 2644, 2718, 2847, 2861; *see also* Decl. Leask, Exhs. 3-10. Accordingly, under Sections 13.0 and 18.10 of the Consent Decree, as well as Federal Rules of Civil Procedure 60(b)(5) and 60(b)(6), federal court oversight and all obligations specified in the Consent Decree should be lifted and the action dismissed with prejudice. Decl. Leask, Exh. 1 at §§ 13.0 and 18.10.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

I. THE INSTANT ACTION

On November 18, 1996, a class of students with disabilities who were, are, or will be residing in the Ravenswood City School District (Ravenswood), brought this action against Ravenswood and State Defendants. Dkt. 1. Their complaint alleged, among other claims, that State Defendants failed to adequately monitor Ravenswood's compliance with federal and state

¹ As indicated herein, the parties entered into the initial Consent Decree in September 1999, which was approved by the Court on January 18, 2000. On March 12, 2003, the parties executed the First Amended Consent Decree, which was granted final approval by this Court on March 31, 2003. The First Amended Consent Decree superseded the initial Consent Decree. Dkt. 832. For conciseness, the State uses "FACD" or "consent decree" hereinafter except where otherwise noted.

1 laws which mandate that districts provide FAPE under the IDEA to all children with disabilities.
2 *Id.*

3 On March 17, 1998, Plaintiffs filed an amended class action complaint (FAC). The FAC
4 sought to compel Ravenswood to provide to every eligible child with a disability living within the
5 jurisdiction of Ravenswood FAPE in the least restrictive environment as required by the IDEA.
6 Dkt. 113. On or around September 2, 1999, the parties entered into the initial Consent Decree.
7 The initial Consent Decree was approved by the Court pursuant to Federal Code of Civil
8 Procedure section 23(e) and thereafter adopted as an order of the Court on January 18, 2000. Dkt.
9 232. The Consent Decree permitted the Court to appoint an independent person “to monitor
10 Ravenswood’s performance of its obligations under [the Consent Decree]” and to “monitor”
11 CDE’s “performance of its obligations under [the Consent Decree].” *Id.* The Court appointed
12 Mark Mlawer as the Monitor. Dkt. 223.

13 **II. THE OPERATIVE CONSENT DECREE**

14 The parties entered into the First Amended Consent Decree (FACD), which was granted
15 final approval by the Court on March 31, 2003. Dkt. 832. Section 4.1 of the FACD provides that
16 CDE is responsible under federal law to ensure that students with disabilities have FAPE
17 provided to them in least restrictive environment, and that as a part of this responsibility, “CDE
18 shall implement an effective monitoring system and complaint resolution procedure.” Decl.
19 Leask, Exh. 1 at p. 9. Although the FACD specifies that the State must demonstrate that it has a
20 monitoring and enforcement system adequate to ensure that Ravenswood is complying with the
21 requirements of the IDEA, the State chose to establish compliance with the FACD with reference
22 to its statewide system for monitoring school districts in California, as opposed to adopting a
23 special monitoring system for Ravenswood. *See Emma C. v. Eastin*, 673 Fed. Appx. 637, 640
24 (9th Cir. 2016).

25 Section 13.0 of the FACD provides the Court with broad authority to effectively end the
26 Court’s oversight of CDE under the consent decree and to dismiss State Defendants from the case
27 with prejudice. Section 13.0 states as follows:
28

1 *13.0 Determination that FAPE is Provided and that CDE has an Effective*
 2 *Monitoring System in Place*

3 If, after considering the motion(s) of Defendants and any opposition thereto, and
 4 after conducting an Evidentiary Hearing, if necessary, the Court determines that (1)
 5 Ravenswood has complied with all Requirements of the Revised RCAP, and (2) the
 6 state-level system in place is capable of ensuring continued compliance with the law
 7 and the provision of FAPE to children with disabilities in Ravenswood, **there shall**
 8 **be a rebuttable presumption that there exists** in Ravenswood a system capable
 9 of providing FAPE to Class Members and **in CDE a system to adequately monitor,**
 10 **supervise and ensure FAPE to Class Members.** To overcome this presumption,
 11 the Class Members must affirmatively demonstrate, with specific evidence, that
 12 Ravenswood does not have a system capable of providing FAPE to Class Members.
 13 **At any time after an appropriate hearing, the Court may order any appropriate**
 14 **relief,** including ordering the District to continue its efforts to comply with the
 15 Revised RCAP, modifying the scope and terms of the Revised RCAP, ordering the
 16 CDE to continue certain monitoring obligations, **or dismissal with prejudice of**
 17 **Ravenswood and CDE in the event that they have complied with the terms of**
 18 **this Decree and Ravenswood has a system capable of providing FAPE to Class**
 19 **Members.**

20 Decl. Leask, Exh. 1 at pp. 20-21, § 13.0 (emphasis added).

21 Section 18.10 of the FACD likewise provides the Court with the authority to dismiss the
 22 entire action with prejudice. Section 18.10 states as follows:

23 “18.10 Upon determination by the Court that Ravenswood and the CDE have
 24 complied with the requirements of this First Amended Consent Decree, including
 25 the Revised RCAP, and there exists at Ravenswood a system capable of providing
 26 FAPE to Class Members, **the Action shall be dismissed with prejudice by the**
 27 **Court.”**

28 Decl. Leask, Exh. 1 at p. 26, § 18.10 (emphasis added).

29 **III. CORRECTIVE ACTION PLAN PROCESS**

30 From 2003 to 2011, the primary focus of the parties was bringing Ravenswood into
 31 compliance with federal law through implementation of the FACD and a corrective action plan
 32 for the district. However, on July 25, 2011, the Court *sua sponte* ordered the parties to address
 33 the relevance and measurement of Section 13.0 of the FACD. Dkt. 1640.

34 Subsequently, the Court adopted a corrective action plan that included a focus on CDE’s
 35 monitoring system (Dkt. 2043), and after some challenges by the State (Dkt. 2056), the parties

1 and the Monitor engaged in a long process involving numerous written submissions from CDE,
 2 responses from Plaintiffs, and the Monitor's reports regarding the State's compliance with various
 3 corrective action plan items. *See, e.g.*, 2346 at 6. Despite these efforts, meaningful progress was
 4 not achieved, at least with respect to the State Defendants.

5 **IV. IMPLEMENTATION OF THE FOUR-PHASE EVIDENTIARY HEARING PROCESS**

6 On May 18, 2018, this Court issued an order that set up a four-phase evidentiary hearing
 7 process for examining whether the State does a legally adequate job of monitoring school districts
 8 for compliance with the IDEA and the FACD (hereinafter, 5/18/18 Order). Dkt. 2387; *see also*
 9 Decl. Leask, Exh. 2. This order expressly superseded the previous corrective action plan. *Id.* at
 10 1-2.

11 The four phases were initially as follows: **Phase 1** – a review of the State's process for
 12 collecting data on school district performance; **Phase 2** – a review of the State's system for
 13 analyzing the data it collects to determine which districts are in need of intervention, and to
 14 determine what type of intervention is called for; **Phase 3** – a review of the State's monitoring
 15 and enforcement activities; and **Phase 4** – a review of the written policies adopted by the State to
 16 memorialize and explain to school districts the systems discussed in the first three phases. *Id.*;
 17 *see also, Emma C. v. Thurmond*, 472 F. Supp. 3d 641, 643 (N.D. Cal. 2018). However, after
 18 completing Phase 3, the parties stipulated (and the Court agreed) that Phase 4 would instead
 19 involve the outstanding issues from the earlier phases, which included (1) the State's plan for
 20 inclusion of IEP implementation data in the selection for school districts for the CIM process; (2)
 21 the State's plan for including restraint and seclusion data in the selection of school districts for the
 22 CIM process; and (3) the State's plan for selecting small school districts for monitoring. Dkt.
 23 2841.

24 As stated in the 5/18/18 Order, “[a]t each phase, the Court will issue a ruling explaining
 25 whether the state has established compliance with federal law in the area at issue.” Dkt. 2387 at
 26 p. 2. In addition, the 5/18/18 Order stated that “[i]f the state is able to show substantial
 27 compliance with federal law at each of the four phases, it is anticipated that the consent decree
 28 will be lifted” *Id.*

V. THE STATE’S DEMONSTRATED COMPLIANCE AT EACH OF THE FOUR-PHASES OF THE EVIDENTIARY HEARING PROCESS

At each phase of the four-phase evidentiary hearing process, the Court found the State in compliance. As previously noted by the Court, “neither excellence nor perfection is necessary.” *Emma C. v. Thurmond*, 668 F. Supp. 3d 902, 904 (N.D. Cal. 2023). Instead, the State was required to show that its “efforts are adequate.” *Id.* After careful examination and vigorous evidentiary hearings, the Court conclusively determined, as set forth in detailed and thorough written orders, that the State’s monitoring efforts are more than adequate and, hence, in compliance with its federal statutory obligations and the FACD.

A. Phase 1

For Phase 1, the 5/18/18 Order required the State to file a report, backed by evidence, explaining how it believed it complies with its data collection obligations. Dkt. 2387 at 2. State Defendants filed their Phase 1 submission on June 1, 2018. Dkt. 2390. The Monitor then filed reports describing his conclusions regarding the State’s compliance with the areas outlined in the 5/18/18 Order. Dkt. 2397, 2401. Plaintiffs filed a response to State Defendants’ Phase 1 submission and the Monitor’s report. Dkt. 2400. State Defendants also filed a response to the Monitor’s report. Dkt. 2399. The Court then conducted a two-day evidentiary hearing on August 1 and August 7, 2018, during which the Court, the Monitor and Plaintiffs had the opportunity to question three top officials from CDE’s Special Education Division under oath.² Dkt. 2407, 2413, 2435.

Following the Phase 1 evidentiary hearing, and after considering the written submissions, reports, and CDE testimony under oath, the Court issued an order on August 17, 2018, finding the State “largely in compliance with its obligation to collect the statewide data it needs to fulfill its monitoring and enforcement responsibilities under the IDEA” with “one exception: data collection to help identify school districts that are not providing services promised in individual education programs, or IEPs.” Dkt. 2428 at p. 1; *see also* Decl. Leask, Exh. 3. With respect to

² In connection with the Phase 1 evidentiary hearing process, State Defendants, Plaintiffs, the Monitor, and Ravenswood filed additional written submissions to the Court. Dkt. 2403, 2406, 2410, 2411, 2417, 2419, 2422, 2420, 2427.

1 IEP implementation data, the Court ruled that the State would have a further opportunity to
 2 demonstrate compliance at a later phase. *Id.* at 2; 38. The parties then moved to Phase 2.

3 **B. Phase 2**

4 Phase 2 examined how the State analyzes the data it collects to determine which districts
 5 are in need of intervention, and to determine what type of intervention is called for. The Court set
 6 a schedule for Phase 2, which followed the structure of the Phase 1 evidentiary hearing process,
 7 but further required the State to respond in writing to the Monitor's report and permitted amicus
 8 briefing. Dkt. 2438, 2441. The Court also later clarified that the scope of Phase 2 would include
 9 an examination of whether the State's decision to issue annual compliance determinations for
 10 certain school districts based on data analysis alone, without further targeted monitoring activity,
 11 is sufficient to fulfill its obligations under the IDEA. Dkt. 2439.

12 State Defendants filed their Phase 2 submission on December 7, 2018. Dkt. 2454, 2455.
 13 The Monitor filed his report on January 28, 2019 (Dkt. 2469) and the State filed its response to
 14 the Monitor's review of the State's Phase 2 Submission on February 25, 2019. Dkt. 2478.
 15 Plaintiffs also filed a response to State Defendants' Phase 2 submission and the Monitor's review
 16 of Phase 2 on March 25, 2019. Dkt. 2484.³ The Court reviewed the State's submissions and the
 17 responses from the parties, and conducted three days of evidentiary hearings on April 29, 2019,
 18 May 1, 2019, and May 31, 2019. Dkt. 2493, 2500, 2511, 2506, 2507, 2518.⁴

19 On July 5, 2019, the Court found the State not in compliance at Phase 2. Dkt. 2520.
 20 However, after further submissions by State Defendants (Dkt. 2545, 2553, 2568, 2563, 2588,
 21 2590, 2592), the Monitor (Dkt. 2555, 2589) and further Phase 2 evidentiary hearings held on June
 22 8, 2020, June 10, 2020, and July 8, 2020 (Dkt. 2578, 2580, 2594, 2585, 2586, 2617), on July 16,
 23 2020, the Court issued a second order on Phase 2, this time finding the state in compliance at
 24 Phase 2. Dkt. 2598; *see also* Decl. Leask, Exh. 4.

25
 26
 27 ³ Additional submissions were provided by the State regarding Phase 2 and the Monitor.
 Dkt. 2501, 2503, 2508, 2510, 2516, 2517, 2516, 2519.

28 ⁴ The State also submitted supplemental filings at the request of the Court. Dkt. 2494,
 2501, 2503, 2508.

1 **C. Phase 1 Holdover – IEP Implementation Data**

2 Following the Court’s Order on Phase 2, the Court and the parties returned to the issue from
3 Phase 1 regarding IEP Implementation Data, and evaluation of the State’s compliance regarding
4 data collection to help identify school districts that are not providing the services promised in
5 IEPs. Dkt. 2610. The State filed its initial submission as to IEP Implementation Data on March
6 12, 2021 (Dkt. 2627), the Monitor filed his report on April 9, 2021 (Dkt. 2630), and the State
7 thereafter responded to the Monitor’s report on May 14, 2021. Dkt. 2635. A hearing on IEP
8 Implementation Data Collection was held on June 2, 2021. Dkt. 2637, 2640.

9 On June 18, 2021, the Court found the State in compliance with its obligations under the
10 IDEA and the FACD with respect to statewide data collection to help the State identify school
11 districts that are not providing the services promised in IEPs, and found that the State had
12 adequately addressed the deficiencies identified in the August 17, 2018 Order (Dkt. 2428) with
13 respect to the same, in light of (1) the State’s written submissions on IEP implementation (Dkt.
14 2627 & 2632), and (2) the State’s witnesses’ testimony at the June 2, 2021 hearing. Dkt. 2637,
15 2641, 2644; *see also* Leask Decl., Exh. 5.

16 **D. Phase 3**

17 Phase 3, which involved a review of the State’s monitoring and enforcement activities, was
18 broken into two subparts. At Phase 3A, the State was required to demonstrate that it has a
19 sufficient plan in place to help struggling school districts improve in meeting their obligations
20 under the IDEA. Dkt. 2653, 2656. Phase 3B was where the State was to demonstrate that its
21 implementation of that plan is sufficient. Dkt. 2847.

22 **Phase 3A:** State Defendants filed their Phase 3A submission on April 15, 2022. Dkt.
23 2676. The Monitor filed his report on July 17, 2022. Dkt. 2679. State Defendants then filed a
24 response to the Monitor’s report. Dkt. 2683. Plaintiffs also filed a response to State Defendants’
25 Phase 3A submission and the Monitor’s report. Dkt. 2688. Subsequently, the Court held three
26 days of Phase 3A hearings in November 2022 to discuss the initial round of written submissions.
27 Dkt. 2695, 2696, 2700, 2701-2703. Additional submissions were made. Dkt. 2683, 2684, 2694.
28 A further hearing was held in March 2023 (Dkt. 2711) and the parties filed supplemental briefs.

Dkt. 2707, 2708, 2709. At the hearings, the state officials explained their monitoring process and answered questions from Plaintiffs, the Monitor, and the Court. Dkt. 2717, 2718. At the conclusion of this phase, on April 4, 2023, the Court found the State in compliance at Phase 3A, finding that the State’s planned monitoring process is both “reasonable” and “sufficient to move forward in the process.” Dkt. 2718; *see also* Decl. Leask, Exh. 6.

Phase 3B: Phase 3B began in late March 2023. Dkt. 2716. To assess the State’s implementation of its intervention plan, the parties selected eleven school districts to track. *Id.* The Court set a briefing schedule broken down into steps that follow the State’s Compliance Improvement Monitoring (CIM) system. *Id.*

During this phase the State produced thousands of pages of documents and offered substantial hearing testimony to allow Plaintiffs, the Monitor, and the Court to assess the State’s performance. Dkt. 2847. The testifying witnesses were three high-level officials from CDE, nine staff consultants who worked with the eleven LEAs who were being tracked in the CIM Process, and two witnesses from technical assistance providers contracted by the State to work with LEAs in the CIM Process. *Id.*⁵

The Court held three days of hearings to discuss Phase 3B submissions on October 17, 2023, February 2, 2024, and April 19, 2024. Dkt. 2743, 2756, 2757, 2774, 2818, 2837, 2840. At the conclusion of Phase 3B, on July 26, 2024, the Court issued its Order re State’s Compliance at Phase 3B. Dkt.2847; *see also*, Decl. Leask, Exh. 7. In this order, the Court found the State in compliance:

The state has demonstrated that its system for intervention with struggling school districts is more than adequate under federal law. It is not a particularly close question. At each step of the intervention process, the state has shown that it provided meaningful support and technical assistance to school districts. The state has shown that it provided meaningful support and technical assistance to school districts. The state has also established an escalating set of enforcement mechanisms to ensure that school districts participate in the process. The state is in compliance at Phase 3B.

Id. at p.1.

⁵ The submissions for Phase 3B are reflected in docket numbers 2729, 2732, 2733, 2746-2752, 2754-2755, 2761, 2763, 2769, 2771-2772, 2777-2784, 2786-2815, 2819-2828, 2832, 2833.

E. Phase 4

As indicated above, Phase 4 involved three outstanding issues from the earlier phases: (1) the State’s plan for inclusion of IEP implementation data in the selection for school districts for the CIM process; (2) the State’s plan for including restraint and seclusion data in the selection of school districts for the CIM process; and (3) the State’s plan for selecting small school districts for monitoring. Dkt. 2841. During this phase, the State produced documents and provided hearing testimony to allow Plaintiffs, the Monitor, and the Court to assess the State’s performance. Dkt. 2850, 2851. Plaintiffs and the Monitor also submitted their responses (Dkt. 2853, 2854), and the State submitted a reply in an effort to answer questions raised by Plaintiffs and the Court Monitor. Dkt. 2856. The hearing on Phase 4 was held on October 25, 2024. Dkt. 2859.

On October 28, 2024, the Court issued its Order re State’s Compliance at Phase 4. Dkt. 2861; *see also* Decl. Leask, Exh. 8. In this order, the Court found compliance, stating in part as follows:

As the Court has previously explained, the consent decree process requires “neither excellence nor perfection” and the State need only show that its “efforts are adequate” under federal law. *Emma C. v. Thurmond*, 668 F. Supp. 3d 902, 904 (N.D. Cal. 2023). Here, the State’s papers and supplemental exhibits, the plaintiffs’ and court monitors’ responses, and the State’s testimony at the evidentiary hearing make clear that the State has more than met that threshold. The State is therefore in compliance with the IDEA and the consent decree at Phase 4.

Id. at p. 2.

ARGUMENT

I. BY THE EXPRESS TERMS OF THE CONSENT DECREE, THERE IS A REBUTTABLE PRESUMPTION OF COMPLIANCE AND BROAD AUTHORITY TO TERMINATE THE CONSENT DECREE AND DISMISS THE ACTION WITH PREJUDICE

As indicated above, Section 13.0 of the FACD creates a rebuttable presumption of compliance in the event that the Court determines (1) Ravenswood has complied with all requirements of its corrective action plan, and (2) the state-level system in place is capable of

1 ensuring continued compliance with the law and the provision of FAPE to children with
2 disabilities in Ravenswood. Dkt. 832; Decl. Leask, Exh. 1, § 13.0.

3 On April 6, 2021, the Court adopted the parties' stipulation finding that Ravenswood
4 complied with its requirements under the FACD, and dismissed Ravenswood from the action.
5 Dkt. 2629.

6 Now, after issuing detailed orders finding compliance as to each of the four-phases, and
7 after concluding the evidentiary hearing process with respect to the State Defendants, the Court
8 has found that the state-level system in place is capable of ensuring continued compliance with
9 the law and the provision of FAPE to children with disabilities. Thus, a rebuttable presumption
10 of compliance exists. Decl. Leask, Exh. 1, 3-10; *see also* Dkt. 2428, 2598, 2644, 2718, 2847,
11 2861.

12 “[C]ourts treat consent decrees as contracts” (*United States v. Asarco, Inc.*, 430 F.3d 972,
13 982 (9th Cir. 2005)), that have “the additional element of judicial approbation.” *Smith v. Sumner*,
14 994 F.2d 1401, 1406 (9th Cir. 1993). To determine whether a consent decree should be
15 terminated or lifted, the court should look to the four corners of the consent decree itself. *Asarco*,
16 *supra*, 430 F.3d at 980 (the meaning of [a] consent decree, like a contract, must be discerned
17 within its four corners.”); *see also Brionez v. United States Department of Agriculture*, 2007 WL
18 217680 at 2 (N.D. Cal. 2007), citing *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962
19 F.2d 853, 856 (9th Cir. 1992) (“The interpretation and enforcement of a settlement agreement is
20 governed by the legal principles applicable to contracts.”).

21 The Supreme Court has held that “the scope of a consent decree must be discerned within
22 its four corners, and not by reference to what might satisfy the purposes of one of the parties to
23 it. Because the defendant has, by the decree, waived his right to litigate the issues raised, a right
24 guaranteed to him by the Due Process Clause, the conditions upon which he has given that waiver
25 must be respected, and the instrument must be construed as it is written, and not as it might have
26 been written had the plaintiff established his factual claims and legal theories in
27 litigation.” *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971).

1 A district court's determination to terminate or end a consent decree is entitled to
2 heightened deference, especially where the district judge oversaw the decree for a significant
3 period of time. *Jeff D. v. Otter*, 643 F.3d 278, 283 (9th Cir. 2011); *Jeff D. v. Kempthorne*, 365
4 F.3d 844, 850 (9th Cir. 2004); *see also Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 394
5 (1992), citing *Hutto v. Finney*, 437 U.S. 678, 688 (1978) ("we . . . owe substantial deference to
6 the 'trial judge's years of experience with the problem at hand.'").

7 As set forth above, by the express terms of the FACD, the Court has broad authority to
8 order "any appropriate relief" including dismissing the action and State Defendants with
9 prejudice. Dkt. 832; Decl. Leask, Exh. 1 at pp. 20-21, § 13.0 and p. 26, § 18.10 (emphasis
10 added). In addition, by the express terms of the consent decree, upon conclusion of the
11 evidentiary hearing process whereby the Court finds the State's system for monitoring school
12 districts throughout California is adequate to ensure that districts are complying with the IDEA, a
13 rebuttable presumption exists that CDE's system adequately monitors the provision of FAPE to
14 Class Members, such that the Court should end its nearly 30-year monitoring of CDE and dismiss
15 State Defendants and the action with prejudice pursuant to Sections 13.0 and 18.10 of the FACD.
16 *See e.g., Labor/Community Strategy Center, et al. v. Los Angeles County Metropolitan*
17 *Transportation Authority, et al.*, 564 F.3d 1115, 1120-1123 (9th Cir. 2009) (Analysis of express
18 terms of the consent decree); *Lee v. Butler County Bd. of Educ.*, 1983 F.Supp.2d 1359 (M.D.Ala.
19 2002) (terminating consent decree where parties has agreed to updated consent decree detailing
20 remedial steps to be taken within three years and district had complied based on evidence
21 presented to court.)

22 As described above, the Court held a four-phase evidentiary hearing process whereby the
23 Court carefully evaluated the State's system for monitoring school districts throughout California,
24 to ensure that the system is adequate to ensure that districts are complying with the IDEA, and
25 found the State in compliance with the IDEA and the FACD. Hence, there is a rebuttable
26 presumption that CDE has a system capable and sufficient to adequately monitor, supervise and
27 ensure FAPE to Class Members. Dkt. 2428, 2598, 2644, 2718, 2847, 2861; *see also* Decl. Leask,
28 Exhs. 3-10. Because this rebuttable presumption has been established, and because Plaintiffs

1 have indicated that they do not intend to rebut this presumption (Dkt. 2862, *see also* Decl. Leask,
 2 Exh. 11, 10/25/24 Hearing Tr., 53:1-18 and 57:13-58:9), the Court should terminate the consent
 3 decree and dismiss the action with prejudice.⁶

4
 5 **II. THE COURT SHOULD ALSO TERMINATE THE CONSENT DECREE AND DISMISS THE
 ACTION PURSUANT TO RULE 60(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

6 Rule 60(b)(5) of the Federal Rules of Civil Procedure provides, in relevant part, that a court
 7 may relieve a party or its legal representative from a final judgment order if the judgement has
 8 been satisfied . . . or applying it prospectively is no longer equitable. Fed. R. Civ. P. 60(b)(5).

9 As noted above, Section 18.10 of the Consent Decree also provides that the Court may
 10 dismiss the action with prejudice “[u]pon determination by the Court that Ravenswood and the
 11 CDE have complied with the requirements of this First Amended Consent Decree” Dkt.
 12 832; Exh. 1 at p. 26, § 18.10.

13 Here also, termination of the FACD is warranted because (1) “substantial compliance” with
 14 the consent decree has been met and (2) applying the consent decree prospectively would not be
 15 equitable.

16 **A. Substantial Compliance with the Consent Decree Has Been Met**

17 To determine whether a party has “satisfied” or “complied” with a consent decree, the
 18 relevant standard is whether the party “substantially complied” with the requirements of the
 19 consent decree. *Otter, supra*, 643 F.3d at 283-84, quoting *United States v. ITT Cont’l Baking Co.*,
 20 420 U.S. 223, 236 (1975) (“Because consent decrees have ‘many attributes of ordinary contracts
 21 [and] . . . should be construed basically as contracts . . . the doctrine of substantial compliance, or
 22 substantial performance, may be employed.”). As set forth in *Otter*, the standard for substantial
 23 compliance implies “something less than a strict and literal compliance with the contract
 24 provisions but fundamentally it means that the deviation is unintentional and so minor or trivial as
 25 to not substantially to defeat the object which the parties intend to accomplish.” *Otter*, 643 F.3d
 26 at 284.

27 ⁶ Any challenge to the rebuttable presumption would shift the burden to Plaintiffs to
 28 “affirmatively demonstrate, with specific evidence,” that CDE does not have a system capable of
 providing FAPE to Class Members. *See* Decl. Leask, Exh. 1 at pp. 20-21, § 13.0.

Moreover, as instructed by the Ninth Circuit, when making a determination regarding whether substantial compliance with a consent decree has been met, the court need not examine in detail past instances of non-compliance or even full compliance; it also does not mean that “every last wish or hope of the decree [has been] achieved, but [that] *the decree accomplished its essential purposes and the situation improved greatly.*” *Labor/Cnty. Strategy Ctr.*, 564 F.3d at 1123 (emphasis added). Instead, Courts must consider “whether the larger purposes of [consent] decrees have been served” in deciding whether their vacatur is justified due to substantial compliance. *Otter*, 643 F.3d at 287; *see also Labor/Cnty. Strategy Ctr.*, 564 F.3d at 1122 (“Our analysis requires we do more than simply count the number of technical deviations from the decree. Instead, we must determine, using a holistic view of all the available information, whether [defendant’s] compliance with the Decree overall was substantial, notwithstanding some minimal level of noncompliance.”).

Here, the Court already has deemed the State to have “substantially complied” through its careful examination of the evidence in the record at each phase of the four-phase evidentiary hearing process. *See* Dkt. 2428, 2598, 2644, 2718, 2847, 2861; *see also* Decl. Leask, Exhs. 3-10. Through this process, the Court has approved the State’s new statewide data collection and monitoring and enforcement system, and its updated CIM Process, deeming it “more than adequate” to meet federal law and the obligations set forth under the FACD. *Id.* Thus, the intended purpose of the consent decree has been fulfilled.

Because State Defendants have substantially complied with the requirements of the FACD, the Court should terminate the FACD and dismiss the action pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure and Section 18.10 of the Consent Decree. *See e.g., Labor/Cnty. Strategy Ctr., supra*, 564 F.3d at 1120-1123 (upholding district court’s finding that the transportation authority had substantially complied with the consent decree); *Burt v. County of Contra Costa*, 2014 WL 253010 (N.D. Cal. 2014) (Order granting motion to vacate the consent decree under Rule 60(b)(5) of the Federal Rules of Civil Procedure in part because of substantial compliance with the consent decree); *Lee*, 1983 F. Supp. 2d at 1368-1369 (terminating consent

1 decree where school district had shown substantial compliance based on evidence presented to
2 court.)

3 **B. Prospective Enforcement of the Consent Decree Would Not Be Equitable**

4 Rule 60(b) of the Federal Rules of Civil Procedure also permits a court to grant relief from
5 terms of a judgment where “applying it prospectively is no longer equitable” or “any other reason
6 . . . justifies relief.” Fed. R. Civ. P. 60(b)(5) & (b)(6).

7 The Supreme Court has cautioned that federal courts should not continue their “oversight of
8 state programs for longer periods of time . . . absent an ongoing violation of federal law.”

9 *Jackson v. Los Lunas Community Program*, 880 F.3d 1176, 1192-93 (10th Cir. 2018), citing *Frew*
10 *v. Hawkins*, 540 U.S. 431, 441-442 (2004). Thus, a “federal court must exercise its equitable
11 powers to ensure that when the objects of the decree have been attained, responsibility for
12 discharging the State’s obligations is returned promptly to the State and its officials. *Id.*

13 “Keeping a consent decree in place any longer than necessary to assure compliance with federal
14 law risks violating principles of federalism and “improperly depriv[ing] future officials of their
15 designated legislative and executive powers.” *Id.*

16 Here too, the critical question is whether the objective of the consent decree has been
17 achieved. *Horne v. Flores*, 557 U.S. 433, 450 (2009), citing *Frew*, 540 U.S. at 442. “If a durable
18 remedy has been implemented, continued enforcement of the order is not only unnecessary, but
19 improper.” *Id.*, citing *Milliken v. Bradley*, 433 U.S., 267, 282 (1977).

20 In this case, implementation of the consent decree has been supervised extensively by the
21 Court and the Monitor for approximately 25 years. There has been continuous involvement and
22 oversight by the Court, through status conferences, hearings, written orders, and evidentiary
23 hearings. These proceedings have sometimes been conciliatory, and sometimes adversarial, with
24 efforts that have resulted in substantial improvement to the statewide system of monitoring to the
25 benefit of all students with disabilities in California. As established above, and as detailed in the
26 Court’s prior Orders, the State’s system for monitoring special education complies with the IDEA
27 and the FACD, and the objective of the FACD has been satisfied. (Dkt. 2428, 2598, 2644, 2718,
28 2847, 2861; *see also* Decl. Leask, Exhs. 3-10)

As demonstrated throughout these proceedings, Court oversight is no longer necessary. Indeed, this Court's prior orders establishes that State Defendants' compliance with federal law is reasonably durable, and that the relevant state officials are committed to ensuring continued compliance. Thus, continued enforcement of the FACD would be inequitable within the meaning of Rule 60(b)(5). *See e.g., Horne*, 557 U.S. at 450-470; *Freeman v. Pitts*, 503 U.S. 467, 490 (1992) (a commitment to future compliance through a record of sustained good-faith efforts to remedy federal violations and, to the extent possible, eliminate the vestiges of the federal violation); *Jackson*, 880 F.3d at 1203 (holding that "the district court's wealth of experience overseeing the litigation should inform its assessment of whether the Defendants are now in compliance with federal law, and whether they are committed to remaining in compliance" and that "continued enforcement of the district Court's original order[s] is inequitable within the meaning of Rule 60(b)(5), and relief is warranted.") Accordingly, for this additional reason, the FACD should be terminated and the action and State Defendants dismissed with prejudice.

CONCLUSION

For the foregoing reasons, State Defendants submit that, pursuant to Sections 13.0 and 18.10 of the FACD, as well as Federal Rules of Civil Procedure 60(b)(5) and 60(b)(6), the FACD should be lifted and the action dismissed with prejudice in its entirety and as against State Defendants.

Dated: November 7, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: Emma C., et al. v. Thurmond, et al. No. 3:96-cv-04179-VC

I hereby certify that on November 7, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE DEFENDANTS' NOTICE OF MOTION AND MOTION TO TERMINATE THE CONSENT DECREE AND FOR DISMISSAL OF THE ACTION WITH PREJUDICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT, [FIRST AMENDED CONSENT DECREE, SECTION 13.0 AND 18.10; AND FRCP 60(B)(5),(6)]

DECLARATION OF STACEY L. LEASK IN SUPPORT OF STATE DEFENDANTS' MOTION TO TERMINATE THE CONSENT DECREE AND FOR DISMISSAL OF THE ACTION WITH PREJUDICE, EXHIBITS 1 TO 11

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 7, 2024, at San Francisco, California.

R. Caoile
Declarant


Signature